

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the Matter of

Amendment of Section 76.51  
of the Commission's Rules  
to Include Dubuque, Iowa  
in the Cedar Rapids-Waterloo,  
Iowa Television Market

CS Docket No. 96-119

### NOTICE OF PROPOSED RULEMAKING

**Adopted: May 20, 1996**

**Released: May 30, 1996**

**Comment Date: July 22, 1996**

**Reply Comment Date: August 12, 1996**

By the Deputy Chief, Cable Services Bureau:

1. Before the Commission is a petition for rulemaking filed by Cedar Rapids Television Company ("CRTV"), licensee of television station KCRG-TV, Channel 9 (ABC) Cedar Rapids, Iowa, to amend Section 76.51 of the Commission's Rules<sup>1</sup> to add the community of Dubuque, Iowa to the "Cedar Rapids-Waterloo" Iowa television market.<sup>2</sup>

### BACKGROUND

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.<sup>3</sup> Certain cable television syndicated exclusivity and network nonduplication rights are also determined by the presence of broadcast

---

<sup>1</sup> 47 C.F.R. §76.51.

<sup>2</sup> See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n. 150 (1993).

<sup>3</sup> See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f). With passage of the Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994) local signal copyright liability is now accorded stations throughout their mandatory cable carriage area, that is, throughout the "area of dominant influence" or ADI of the market to which the station is assigned. Although this generally reduces the importance of the Section 76.51 market list as a determinator of copyright liability, there remain situations where the list determines liability, i.e., where the 35-mile zones associated with the Section 76.51 list extend outside of the ADI of the market.

station communities of license on this list.<sup>4</sup> Some markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.<sup>5</sup> Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.<sup>6</sup>

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>7</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>8</sup> which added Section 614 to the Communications Act of 1934,<sup>9</sup> requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission has stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rulemaking based on the submitted petition.<sup>10</sup>

---

<sup>4</sup> See 47 C.F.R. Part 76, Subpart F.

<sup>5</sup> See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

<sup>6</sup> See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

<sup>7</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See, also, *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>8</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>9</sup> 47 U.S.C. §614.

<sup>10</sup> [R]equests for specific hyphenated market changes that appear worthy of consideration will be routinely docketed and issued as rulemaking proposals. See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n. 50 (1993).

## THE PETITION

5. CRTV states that it meets all of the criteria delineated by the Commission for redesignation of the Cedar Rapids-Waterloo market to include Dubuque. According to the petitioner, Dubuque is located 54.3 miles northeast of Cedar Rapids and 75.6 miles east of Waterloo with the entire county of Dubuque falling within the Grade B contours of three of the four stations in the Cedar Rapids-Waterloo market. Further, the Grade B contour of the only station licensed to Dubuque significantly overlaps those of the three Cedar Rapids-Waterloo stations. It attaches a map illustrating contours of stations licensed to Cedar Rapids, Waterloo and Dubuque. Moreover, CRTV claims that Cedar Rapids-Waterloo stations have "significantly viewed" status<sup>11</sup> and that there are common cultural, social and economic interests between the residents of these areas. Also, it states that the stations licensed to these three communities compete head-to-head throughout the market for programming, viewers and advertising revenues and are recognized by Nielsen and Arbitron as "Cedar Rapids-Waterloo-Dubuque" for ratings purposes.

6. In its petition, CRTV contends that the current "Cedar Rapids-Waterloo" market designation does not reflect the reality of the television market in that area and that adoption of the designation "Cedar Rapids-Waterloo-Dubuque" would extend the area in which Cedar Rapids-Waterloo (and Dubuque) stations are considered local signals, thus redefining the area in which those stations may assert territorial exclusivity, syndicated exclusivity and network nonduplication rights. According to CRTV, absent the requested amendment of Section 76.51, KCRG-TV is placed at a distinct competitive disadvantage by the inequitable application of these rules because its natural market for programming is being encroached upon, even though it pays substantially more for syndicated programming than do the smaller market stations whose signals are imported. Moreover, CRTV claims that the cable system serving Dubuque imports the signals of a distant ABC affiliate, as well as stations airing syndicated programming also carried by KCRG-TV. Also, it states that KCRG-TV cannot assert territorial exclusivity rights with respect to Dubuque, however, because it is not part of the Commission's Cedar Rapids-Waterloo market designation. Absent the requested relief, CRTV maintains, it would jeopardize the continued viability of KCRG-TV's local programming directed to Dubuque. The principal benefit of the requested change, however, is said to be parity among market stations under Section 73.658(m) of the Commission's rules (territorial exclusivity rules) with respect to Dubuque.

## DISCUSSION

7. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Cedar Rapids, Waterloo and Dubuque, do compete for audiences and advertisers throughout much of the proposed combined market area. Moreover,

---

<sup>11</sup> See Section 76.54 of the Commission's Rules.

the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

8. The Commission has stated that it will not restrict the types of evidence parties may submit to demonstrate the propriety of a proposed market adjustment because each case will be unique to the individual factual situation presented.<sup>12</sup> The petitioner here has alleged that the proximity of the subject communities and Dubuque's signal coverage to Cedar Rapids and Waterloo demonstrate the appropriateness of the requested action. However, the distance between Dubuque and Cedar Rapids or Waterloo is not, of itself, determinative of the requisite showing of commonality among these communities. CRTV has also shown that it covers Cedar Rapids, Waterloo and Dubuque with a Grade B signal contour. However, it is not apparent that a Dubuque station would place such a signal contour over the Cedar Rapids-Waterloo market.

9. Nevertheless, because the facts before us indicate that KCRG-TV and the stations licensed to Cedar Rapids, Waterloo and Dubuque may, in fact, be competitive, we believe that the initiation of a rulemaking proceeding is warranted. Proponents of amendments to Section 76.51 of our Rules, however, should be aware that the standard of proof to change the rules is higher than the standard to simply initiate a rulemaking proceeding. Under these circumstances, then, it may be helpful to receive additional comment on the issues raised above, as well as the general nature of any competition between KCRG-TV and other stations in the subject market for viewers, programming and advertising revenue. Comment is sought in particular on what consequences, if any, result to the proposal from the addition of Dubuque to the market (see paragraph 1 above) and from changes in copyright law attendant to passage of the Satellite Home Viewer Act of 1994 (see note 3 above).

### ADMINISTRATIVE MATTERS

#### Ex Parte Rules -- Non-Restricted Proceeding

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

#### Initial Regulatory Flexibility Analysis

11. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of*

---

<sup>12</sup> See *Report and Order* in MM Docket No. 92-259, 8 FCC Rcd at 2977.

*Proposed Rulemaking*, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **July 22, 1996** and reply comments on or before **August 12, 1996**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Additional Information

13. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact Vanessa Stallings (202) 418-7200.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau